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INNOVATIVE TECHNOLOGY DISTRIBUTORS, LLC

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15
16 SAN JOSE DIVISION

17 ORACLE AMERICA, INC.,

18 Plaintiff,

19 vs.

20 INNOVATIVE TECHNOLOGY
21 DISTRIBUTORS, LLC,

22 Defendant.

No. 11-CV-01043 LHK

Consolidated for all purposes with
No. 11-CV-02135 LHK

STIPULATED PROTECTIVE ORDER

1 **WHEREAS** during the course of this action, the parties and certain non-
2 parties may be subject to discovery requests and/or proceedings that seek the disclosure of
3 information that the party or non-party to whom the request is directed considers to be
4 confidential and/or proprietary.

5 **WHEREAS** the parties wish to preserve the confidentiality of such
6 information through the use of a Discovery Confidentiality Order.

7 **IT IS THEREFORE HEREBY STIPULATED AND AGREED**, by and
8 between counsel for Innovative Technology Distributors, LLC (“ITD”), Oracle Corporation
9 and Oracle America, Inc. (jointly, “Oracle”), subject to the approval of the Court, that the
10 following Order shall govern the handling of documents, depositions, deposition exhibits,
11 interrogatory responses, admissions and any other information or material produced, given
12 or exchanged by and among the parties and any non-parties to this litigation (including,
13 without limitation, any non-party that seeks to intervene or to object to any of the
14 proceedings in the litigation) in connection with discovery in this litigation.

15 **A. Designated Material**

16 1. The parties may designate documents produced, testimony given,
17 or any other materials exchanged in connection with this action as “Confidential” or
18 “Attorneys’ Eyes Only” under the terms of this Order and *Fed. R. Civ. P. 26(c)*.

19 2. **“Confidential”** shall mean all documents and testimony, and all
20 information contained therein, and other information designated as confidential, if such
21 documents or testimony contain trade secrets, proprietary business information,
22 competitively sensitive information, or any other non-public business information, the
23 disclosure of which would, in the good faith judgment of the party designating the
24 material as confidential, be detrimental to the conduct of that party’s business or the
25 business of any of that party’s customers or clients if the material becomes public.

26 3. **“Attorneys’ Eyes Only”** shall mean all documents and testimony,
27 and all information contained therein, and other information designated as “Attorneys’
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1 Eyes Only,” if such documents or testimony contain highly sensitive non-public business
2 or financial information, the disclosure of which would, in the good faith judgment of the
3 party designating the material as “Attorneys’ Eyes Only,” cause serious and irreparable
4 harm to that party’s business or the business of any of that party’s customers or clients if
5 the material is disclosed to persons allowed to see Confidential material beyond the
6 persons specified in Section B.2 below. The parties currently believe that there is little, if
7 any, material that falls into this category, and therefore anticipate that this designation
8 will be used very sparingly. Information that is already publicly available may not be
9 designated as “Confidential” or “Attorneys’ Eyes Only.”

10 4. **“Producing Party”** shall mean the parties to this action and any
11 non-parties producing “Confidential” or “Attorneys’ Eyes Only” information in
12 connection with depositions, document production or otherwise, or the party asserting the
13 confidentiality privilege, as the case may be.

14 5. **“Receiving Party”** shall mean the parties to this action and any
15 non-parties receiving “Confidential” or “Attorneys’ Eyes Only” information in
16 connection with depositions, document production, or otherwise.

17 6. The Receiving Party may, at any time, notify the Producing Party
18 that the Receiving Party does not concur in the designation of a document or other
19 material as “Confidential” or “Attorneys’ Eyes Only.” If the Receiving Party contends
20 that any document or other material designated as “Confidential” or “Attorneys’ Eyes
21 Only” is not entitled to confidential treatment, the Receiving Party shall give written
22 notice to the party who designated the material, specifically identifying the challenged
23 material. The designating party, by its counsel, shall respond in writing within 5 days of
24 receipt of the written request, or within such other period of time as may be designated by
25 order of the Court or agreement of the parties. If the designating party refuses to remove
26 the “Confidential” or “Attorneys’ Eyes Only” designation, its written response shall state
27 the reasons for this refusal. If the challenge to the confidential designation is not resolved
28 after a good faith meet and confer, the party challenging the designation may move before

1 the Court for an order declassifying those documents or materials. If no such motion is
2 filed, such documents or materials shall continue to be treated as designated by the
3 Producing Party. If such a motion is filed, the documents or other materials shall be
4 deemed as designated by the Producing Party unless and until the Court rules otherwise.

5 **B. Access to Confidential Information**

6 1. Except with the prior written consent of the Producing Party or by
7 Order of the Court, “**Confidential**” information shall not be furnished, shown or disclosed
8 to any person or entity except to:

- 9 a. Personnel of ITD or Oracle involved in the litigation of this
10 matter and who have been advised of their obligations
11 hereunder;
- 12 b. Counsel of record for the parties to this action and their
13 associated attorneys, paralegals and other professional
14 personnel (including support staff) who are directly assisting
15 such counsel in the preparation of this action for trial or other
16 proceedings herein, are under the supervision or control of
17 such counsel, and who have been advised by such counsel of
18 their obligations hereunder, and Jeff Ross, Oracle’s
19 Managing Counsel, Debbie Miller, Oracle’s Director of
20 Litigation, and Dorian Daley, Oracle’s General Counsel;
- 21 c. Expert witnesses or consultants retained by the parties or
22 their counsel to furnish technical or expert services in
23 connection with this action or to give testimony with respect
24 to the subject matter of this action at the trial of this action or
25 other proceeding herein; provided, however, that such
26 Confidential information is furnished, shown or disclosed in
27 accordance with Paragraph (B)(5) below;
28

- 1 d. The Court and court personnel;
- 2 e. An officer before whom a deposition is taken, including
- 3 stenographic and video reporters and any necessary
- 4 secretarial, clerical or other personnel of such officer;
- 5 f. Trial and deposition witnesses;
- 6 g. Any person indicated on the face of a document to be the
- 7 author, addressee, or a copy recipient of the document;
- 8 h. Vendors with whom counsel of record for the parties to this
- 9 litigation have contracted for purely clerical functions, such
- 10 as the copying of documents;
- 11 i. Mock jurors and jury consultants who have been engaged by
- 12 any party and/or a party's consultant in preparation for trial.
- 13 For any jury research, an appropriate screening process must
- 14 be used to assure that the jury consultant(s) and mock jurors
- 15 chosen for any mock jury presentation are not current or
- 16 former officers, directors, employees or consultants of any
- 17 party or any direct competitors of any party. Each jury
- 18 consultant and/or mock jurors must agree in writing to be
- 19 bound by this Order by signing and undertaking the form of
- 20 Exhibit A to this Order; and
- 21
- 22 j. Any other person agreed to by the parties.

23 2. Except with the prior written consent of the Producing Party or by

24 Order of the Court, "**Attorneys' Eyes Only**" information shall not be furnished, shown or

25 disclosed to any person or entity except to those persons listed above in Paragraph (B)(1)

26 under item (b) (with the exception of Dorian Daley), item (c) (subject to Paragraph (B)(5)

27 below), item (d), item (e), item (g), and item (h), unless the Producing Party consents to

28 additional disclosure or the Court orders otherwise.

1 3. Confidential and Attorneys' Eyes Only information shall be utilized
2 by the Receiving Party and/or its counsel, as applicable, only for purposes of this litigation
3 and for no other purposes.

4 4. With respect to any information produced by ITD on an "Attorneys'
5 Eyes Only" basis, Jeff Ross and Debbie Miller will take all necessary steps to ensure that
6 any such Attorneys' Eyes Only documents are not available for inspection by other
7 employees within Oracle, and such Attorneys' Eyes Only documents shall not be stored on
8 an Oracle server or computer system that could be accessed by other Oracle employees.

9 5. Before any disclosure of Confidential or Attorneys' Eyes Only
10 information is made to an expert witness or consultant pursuant to Paragraph (B)(1)(c)
11 above, counsel for the Receiving Party shall obtain from the expert, the expert's written
12 agreement, in the form of Exhibit A attached hereto, to comply with and be bound by its
13 terms. Confidential or Attorneys' Eyes Only information may be provided to an expert
14 witness or consultant to the extent necessary for such expert or consultant to prepare a
15 written opinion, to prepare to testify, or to assist counsel in the prosecution or defense of
16 this litigation, *provided that* such expert or consultant (i) is not currently an employee of, or
17 advising or discussing employment with, or consultant to, any party to or any competitor or
18 potential transaction counterparty of any party to this litigation, as far as the expert or
19 consultant can reasonably determine, and (ii) is using said Confidential or Attorneys' Eyes
20 Only information solely in connection with this litigation.

21
22 **C. Designation Of Materials**

23 The designation of materials as "Confidential" or "Attorneys' Eyes Only"
24 for purposes of this Order shall be made in the following manner by any Producing Party:

25 1. In the case of documents or other materials (apart from depositions
26 or other pretrial testimony), by affixing the legend "Confidential" or "Attorneys' Eyes
27 Only" to each page containing any Confidential or Attorneys' Eyes Only information,
28 except that in the case of multi-page documents bound together by a staple or other

1 permanent binding, the word(s) “Confidential” or “Attorneys’ Eyes Only” need only be
2 stamped on the first page of the document in order for the entire document to be treated as
3 Confidential or Attorneys’ Eyes Only; provided that the failure to designate a document as
4 “Confidential” or “Attorneys’ Eyes Only” does not constitute a waiver of such claim, and a
5 Producing Party may so designate a document after such document has been produced,
6 with the effect that such document is thereafter subject to the protections of this Order.

7 2. In the case of depositions or other pretrial testimony, (a) by a
8 statement on the record, by counsel, at the time of such disclosure; or (b) by written notice,
9 sent to all parties within 5 days after receiving a copy of the transcript thereof, and in both
10 of the foregoing instances, by directing the court reporter that the appropriate
11 confidentiality legend be affixed to the first page and all portions of the original and all
12 copies of the transcript containing any Confidential or Attorneys’ Eyes Only material.
13 Unless otherwise stated on the record, all depositions and other pretrial testimony shall be
14 deemed to be “Confidential” until the expiration of the fifth day after counsel receives a
15 copy of the transcript thereof, after which time such deposition or pretrial testimony shall
16 be treated in accordance with its designation, if any. The parties may modify this
17 procedure for any particular deposition, through agreement on the record at such
18 deposition, without further order of the Court.

19
20 **D. Inadvertent Production Of Privileged Materials**

21 1. If information subject to a claim of attorney-client privilege, attorney
22 work product or any other ground on which production of such information should not be
23 made to any party is nevertheless inadvertently produced to a party or parties, Federal Rule
24 of Evidence 502(b) and Federal Rule of Civil Procedure 26(b)(5)(B) shall apply.

25 2. The failure of a party at a deposition to challenge the assertion of
26 any privilege, work-product protection or immunity over any document shall not prejudice
27 the right of such party to challenge the assertion of any such privilege or immunity in
28 accordance with the other procedures described in this paragraph.

1 **E. Other Items**

2 1. If any party intends to file with the Court materials that have been
3 designated as Confidential or Attorneys' Eyes Only, the filing party must comply with
4 Local Rule 79-5. Prior to any dispositive motion hearings and/or trial in this matter,
5 counsel for the parties shall meet and confer to negotiate a proposal regarding the treatment
6 of Confidential or Attorneys' Eyes Only information proposed to be used at such hearing or
7 trial. Ultimately, the determination of treatment of Confidential or Attorneys' Eyes Only
8 information at such hearing or trial will be determined by the Court.

9 2. This Order shall not preclude counsel for the parties from using
10 during any deposition in this action any documents or information which have been
11 designated as "Confidential" or "Attorneys' Eyes Only" under the terms hereof. Any court
12 reporter and deposition witness who is given access to Confidential or Attorneys' Eyes
13 Only information shall, prior thereto, be provided with a copy of this Order and shall
14 execute the certificate annexed hereto. Counsel for the party obtaining the certificate shall
15 supply a copy to counsel for the other party.

16 3. The parties to this action agree that the production of any discovery
17 material by any non-party shall be subject to and governed by the terms of this Order.
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19 4. The parties and any other persons subject to the terms of this Order
20 agree that the Court shall retain jurisdiction over them for the purpose of enforcing this
21 Order.

22 5. Upon termination of this litigation, any appeal or the expiration of
23 the right to appeal, all originals and copies of any Confidential or Attorneys' Eyes Only
24 information shall either be destroyed or returned to the Producing Party.

25 6. Nothing in this Order shall prevent any party or other person from
26 seeking modification of this Order or from objecting to discovery that it believes to be
27 otherwise improper.
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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: December 20, 2011

GCA LAW PARTNERS LLP

By: /s/ Valerie M. Wagner
Valerie M. Wagner

Attorneys for Defendant Innovative
Technology Distributors, LLC

Dated: December 20, 2011

HOLMES ROBERTS & OWEN LLP

By: /s/ Meryl Macklin
Meryl Macklin

Attorneys for Oracle America, Inc. and
Oracle Corporation

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Dated: December 20, 2011

By: /s/ Valerie M. Wagner
Valerie M. Wagner

Case No.: 11-cv-01043-LHK
STIPULATED PROTECTIVE ORDER

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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: December 27, 2011


Hon. Lucy H. Koh, U.S.D.J.

1 **EXHIBIT A**

2

3 I have been given a copy of the Discovery Confidentiality Order entered in

4 the consolidated actions titled *Oracle America, Inc. v. Innovative Technology*

5 *Distributors, Inc.*, Civil Action Nos. 11-CV-01043 and 11-CV-02135 (LHK), pending in

6 the United States District Court for the Northern District of California.. I have read and

7 understand the terms of the Order. I understand that unauthorized disclosure of

8 “Confidential” or “Attorneys’ Eyes Only” information will constitute a violation of the

9 Order and that the parties reserve the right to seek appropriate redress, including

10 sanctions, from the Court for willful violations thereof. With full knowledge of the terms

11 and requirements of the Order, I agree to be bound by its terms. I agree that I shall not

12 disclose to others, except in accordance with the Order, such information or documents,

13 and that such information or documents shall be used only for the purpose of the legal

14 proceeding in which the documents were produced. I further agree and attest to my

15 understanding that my obligation to honor the confidentiality of such information or

16 documents will continue even after the termination of this legal proceeding.

17

18 I agree to subject myself to the jurisdiction of the United States District

19 Court for the Northern District of California for the purposes of enforcement of this

20 Order.

21

22 Dated: _____

By: _____